IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.RC.No. 24 of 1997()

S.C.NO.67/1993 OF SESSIONS COURT, PATHANAMTHITTA
CRIME NO.117/1991 OF KOIPURAM POLICE STATION

.....

: PETITIONER

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR.

RESPONDENTS:
---

1. VENUGOPALAN NAIR @ VENU,
S/O.SIVASANKARA PILLAI, MADAKKAPPALLIL VEEDU,
THOTTAPPUZHASSERI MURI AND VILLAGE.

2. SATHIAMMA,
W/O.SIVASANKARA PILLAI, MADAKKAPPALLIL VEEDU OF
DO.DO.

3. SIVANKUTTY NAIR, S/O.SIVASANKARA PILLAI,
MADAKKAPPALLIL VEEDU OF DO. DO.

4. JANAKIAMMA,
D/O.KUTTYAMMA, MADAKKAPPALLIL VEEDU OF DO. DO.

R2 & R3 BY SRI.K.GOPALAKRISHNA KURUP

THIS CRIMINAL RIVISION CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.C.No.24 of 1997

Dated this the 17th day of January, 2007

ORDER

This Crl.R.C has been registered suo motu by this Court after perusal of the judgment of acquittal in S.C.No.67 of 1993 by the Sessions Judge of Pathanamthitta. Accused persons faced the trial in that prosecution. The crux of the allegations is that 4 accused persons were guilty of the offence of matrimonial cruelty punishable under Section 498 A read with 34 I.P.C against the deceased. A further allegation was raised that the accused had committed the offence punishable under Section 306 read with 34 I.P.C.

2. The 1st accused was the husband of PW1/the wife. 2nd accused is the mother-in-law of PW1. 3rd accused is the brother-in-law of PW1 and the 4th accused was the paternal aunt of the 1st accused.

3. In the trial before the learned Sessions Judge, Pws 1 to 11 were examined and Exts.P1 to P9 were marked on the side of the prosecution. M.O 1 series were also marked. On the side of the accused, no oral evidence was adduced. Exts.D1 to D8 were marked.

4. The learned Sessions Judge came to the conclusion that PW1 having not expired, the charge under Section 306 I.P.C is not sustainable. Going by the case of the prosecution in this case, PW1 had neither committed suicide nor had she even attempted to commit

suicide. In these circumstances, there can be no successful challenge against the verdict of acquittal under Section 306 I.P.C, it was held.

5. What remained was the allegation under Section 498 A I.P.C. PW1 is the wife/victim. PWs 2 & 3 are her father and mother. PW4, a neighbour who had turned hostile completely. PW5 is the Doctor who issued Exts.P3 & P4. PW6 , the Village Officer had issued Ext.P5 plan. PW7 is a person who had escorted PW1 on the faithful day to her parental home. PW8 is an attestor to Ext.P6 scene mahazar. Pws 9 & 10 are police officials. Ext.P1 is the F.I statement lodged by PW1 and Ext.P9, the F.I.R. Exts.P7 & P8 are mahazars prepared by the police in the course of investigation.

6. The 1st accused husband is now no more, he having expired during the pendency of the proceedings. Similarly the 4th accused has also expired during the pendency of this Crl.R.C. Copies of certificates of death showing that accused Nos.1 and 4 had expired are placed before the Court.

7. The short question that survives for consideration is whether the judgment of acquittal of the 2nd and 3rd accused warrants interference in this proceedings registered suo motu by this Court. I have been taken through the entire evidence available and the impugned judgment passed by the court below. Except the sweeping omnibus and general statement by PW1 that accused 2 to 4 had also

harassed her, there is not a whisper of a specific allegation whatsoever raised against accused 2 to 4. We are concerned with the allegations against accused 2 and 3 at this stage of the proceedings. That omnibus sweeping and general statement made by PW1 in the course of her examination in court cannot by itself at any rate, justify this Court interfering with the judgment of acquittal rendered in their favour by the trial court. The 1st accused having expired, it is not necessary now to consider the validity of the judgment of acquittal so far as he is concerned.

8. This Crl.R.C is, accordingly, dismissed holding that the acquittal of accused 2 and 3 do not warrant interference in this proceedings.

(R.BASANT, JUDGE)

rtr/-

R.BASANT, J

Crl.R.C.No.24 of 1997

17-01-2007

ORDER